

Decision 06-07-015 July 20, 2006

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of PacifiCorp (U-901-E) and
MidAmerican Energy Holdings Company for
Exemption Under Section 853(b) from the
Approval Requirements of Section 854(a) of the
Public Utilities Code with Respect to the
Acquisition of PacifiCorp by MidAmerican.

Application 05-07-010
(Filed July 15, 2005)

**OPINION GRANTING INTERVENOR COMPENSATION
TO THE KARUK TRIBE FOR SUBSTANTIAL CONTRIBUTIONS
TO DECISION 06-02-033**

Table of Contents

<u>Title</u>	<u>Page</u>
OPINION GRANTING INTERVENOR COMPENSATION TO THE KARUK TRIBE FOR SUBSTANTIAL CONTRIBUTIONS TO DECISION 06-02-033	2
1. Summary	2
2. Background	2
3. Requirements for Intervenor Compensation	3
4. Procedural Requirements	4
5. Substantial Contribution Requirement	4
6. Reasonable Compensation Requirement	6
A. Claimed Hours	7
B. Market Rate Standard	7
C. Productivity	9
D. Direct Expenses	10
7. Award	10
8. Waiver of Comment Period	11
9. Assignment of Proceeding	11
Findings of Fact	11
Conclusions of Law	12
ORDER	12

**OPINION GRANTING INTERVENOR COMPENSATION
TO THE KARUK TRIBE FOR SUBSTANTIAL CONTRIBUTIONS
TO DECISION 06-02-033**

1. Summary

This Decision awards \$24,698.73 to the Karuk Tribe for its substantial contributions to Decision (D.) 06-02-033. This proceeding is closed.

2. Background

D.06-02-033 authorized MidAmerican Energy Holdings Company (MEHC) to acquire PacifiCorp pursuant to Pub. Util. Code § 854(a)¹, subject to the conditions in Appendix D of D.06-02-033. Appendix D was based, in large part, on a Settlement Agreement signed by PacifiCorp, MEHC, and 15 protestants, including the Karuk Tribe. The conditions included the so-called “California Commitments,” which included the following:

- C-1** The transaction will not diminish PacifiCorp’s ability or willingness to perform its legal obligations associated with its Klamath River hydroelectric system or PacifiCorp’s ability to recover associated costs.
- C-2** In implementing Commitment 36, PacifiCorp will make cost-effective investments in California as reasonably required to serve load.²
- C-3** PacifiCorp will continue to offer cost-effective demand side management programs in California.
- C-4** PacifiCorp will take the following actions to extend electric service to unserved Indian communities located in PacifiCorp’s service territory. Within 30 days of receiving a request for service by the Tribe(s), PacifiCorp will initiate discussions with the Tribe(s) and other appropriate stakeholders regarding the extension of electric service.

¹ All statutory references are to the Public Utilities Code.

² Commitment 36 requires PacifiCorp to spend nearly \$160 million on transmission and distribution infrastructure, operations, and maintenance.

Within one year PacifiCorp will file an application or other pleading that: (A) seeks permission to extend electric service to specified areas, or (B) states its reasons for not extending electric service.

C-5 PacifiCorp will provide \$150,000 per year for three years to fund a study by an independent consultant to identify the presence, distribution, and possible causes of toxic algae, and their toxins, in the Klamath River basin. The study will be designed and overseen in cooperation with the appropriate federal and state agencies.

D.06-02-033 closed this proceeding.

3. Requirements for Intervenor Compensation

Pursuant to §§ 1801-1812, intervenors may obtain compensation for the reasonable costs they incur to participate in a Commission proceeding if all of the following requirements are satisfied:

1. The intervenor must be a customer or a participant representing consumers, customers, or subscribers of a utility subject to the Commission's jurisdiction. (§ 1802(b).)
2. The intervenor must file and serve a sufficient notice of intent (NOI) to claim compensation within 30 days of the prehearing conference (PHC) or other appropriate times. (§ 1804(a).)
3. The intervenor must file and serve a request for a compensation award within 60 days of a final order or decision. (§ 1804(c).)
4. The intervenor must demonstrate significant financial hardship. (§ 1804(b)(1).)
5. The intervenor must have made a substantial contribution to the proceeding through the Commission's adoption, in whole or in part, of the intervenor's contention or recommendations. (§ 1803(a).)
6. The claimed fees and costs must be reasonable and comparable to the market rates paid to experts and advocates having similar training and experience and offering similar services. (§ 1806.)

For discussion here, the procedural requirements in Items 1-4 above are combined, followed by separate discussion of Items 5 and 6.

4. Procedural Requirements

To receive compensation, § 1802(b) requires an intervenor to be a utility customer or a participant representing customers. Section 1802(b)(1) defines a “customer” as: (A) a participant representing consumers, customers or subscribers of a utility; (B) a representative who has been authorized by a customer; or (C) a representative of a group or organization authorized by its articles of incorporation or bylaws to represent residential or small business customers. On November 21, 2005, the assigned Administrative Law Judge (ALJ) ruled that the Karuk Tribe is a customer pursuant to § 1802(b)(1)(C).

Section 1804(a) requires an NOI to be filed within 30 days of the PHC. A PHC was held on September 9, 2005. The Karuk Tribe filed a timely NOI on October 11, 2005.³ Section 1804(c) requires a request for compensation to be filed within 60 days of the final decision. The Karuk Tribe filed its request on April 17, 2006, within 60 days of D.06-02-033 being issued. The request is unopposed.

Finally, § 1804(2)(g) requires a showing of significant financial hardship. On November 21, 2005, the ALJ ruled that the Karuk Tribe satisfied this condition.

Based on the foregoing, we affirm the ALJ’s ruling and find that the Karuk Tribe has satisfied all of the procedural requirements necessary to claim compensation in this proceeding.

5. Substantial Contribution Requirement

To obtain intervenor compensation, a customer must make a substantial contribution to a Commission proceeding. A substantial contribution occurs if

³ Due to weekends and a holiday, the last day to file an NOI was Oct. 11, 2005.

the assigned ALJ or Commission adopts one or more of the customer's factual or legal contentions, or specific policy or procedural recommendations.⁴ A substantial contribution may also occur if the customer's participation materially supplements, complements, or contributes to the presentation of another party.⁵ Should the Commission not adopt any of the customer's recommendations, compensation may still be awarded if, in the judgment of the Commission, the customer's participation substantially contributed to the decision or order.⁶ For example, if a customer provided a unique perspective that enriched the Commission's deliberations and the record, the Commission could find that the customer made a substantial contribution. The Commission has also held that active participation in settlements might justify compensation.⁷

With this guidance in mind, we turn to the substantial contributions claimed by the Karuk Tribe. The Tribe argued that PacifiCorp's dams on the Klamath River create a habitat for algae that produce toxins that are harmful to humans and animals. This ultimately led to the Commission's adoption of California Commitment C-5, which requires PacifiCorp to provide \$450,000 for a study of the causes of the toxic algae.

We agree with the Karuk Tribe that it made substantial contributions to D.06-02-033, particularly with respect to the Commission's adoption of the California Commitment C-5.

The Karuk Tribe states that it avoided unnecessary duplication by coordinating efforts with the Yurok Tribe and other participants. We recognize

⁴ § 1802(i).

⁵ §§ 1802(i) and 1802.5.

⁶ § 1802(i).

⁷ D.05-09-010, 2005 CA. PUC LEXIS 349, *4 - 5.

the Karuk Tribe's participation overlapped somewhat with the participation of the Yurok Tribe, as both Tribes advocated the adoption of California Commitment C-5. We conclude that because the Klamath River flows through the ancestral lands of both the Karuk Tribe and the Yurok Tribe and is essential to the culture and sustenance of each Tribe, the participation of the two Tribes was complementary and it was appropriate for both Tribes to participate fully on matters related to the Klamath River.⁸

6. Reasonable Compensation Requirement

The Karuk Tribe requests \$25,198.73 for the following costs it incurred for its substantial contributions to D.06-02-033⁹:

<u>Attorney Fees</u>	<u>Year</u>	<u>Hours</u>	<u>Rate</u>	<u>Total</u>
Barbara Lee Norman	2005-6	86.5	\$200	\$17,300.00
Barbara Lee Norman *	2005-6	25.5	\$100	\$2,550.00
Barbara Lee Norman - Travel	2005-6	19.0	\$100	\$1,900.00
<i>Subtotal - Hours & Fees</i>		<i>131</i>		<i>\$21,750.00</i>
<u>Professional Fees</u>	<u>Year</u>	<u>Hours</u>	<u>Rate</u>	<u>Total</u>
Sandi Tripp	2005	12.75	\$50.72	\$ 646.68
Craig Tucker	2005	40.0	\$58.84	\$2,353.60
Ramona Driver	2005-6	11.0	\$36.95	\$ 406.45
<i>Subtotal - Hours & Fees</i>		<i>63.75</i>		<i>\$3,406.73</i>
<u>Expenses</u>				
Parking in San Francisco				42.00
<i>Subtotal Expenses</i>				<i>42.00</i>
Total		<i>194.75</i>		<i>\$25,198.73</i>

* Time spent preparing the NOI and compensation request.

⁸ See § 1802.5.

⁹ The above table reflects the correction of several minor arithmetical errors in the Karuk Tribe's request for intervenor compensation. The Karuk Tribe was notified of the errors and has approved the corrections.

Intervenors may be compensated for the reasonable costs they incur for their substantial contributions. The criteria we use to assess reasonableness are addressed below.

A. Claimed Hours

Customers must document the number of hours claimed and show that the claimed hours were related to, and necessary for, the substantial contribution. The Karuk Tribe claims 194.75 hours for four persons. Their work included the drafting of pleadings, attending settlement negotiations, collaborating with other participants, and reviewing and drafting the settlement agreement. The Karuk Tribe states that it endeavored to minimize the cost of its participation by having much of the associated work and analysis performed by the staff of the Tribe's Department of Natural Resources. To further minimize costs, travel was limited to only the most important meetings and hearings.

The Karuk Tribe supported its claimed hours with a time sheet of daily hours and a brief description of how the daily hours related to this proceeding. We find that this documentation adequately supports the claimed hours.

The Karuk Tribe requests five hours for the time spent by attorney Norman to travel to Orleans, California to meet with the Karuk Tribe's Director of Natural Resources. The travel time spent by an attorney to meet with a client should be included in the overhead costs that are built into the attorney's hourly rate. Accordingly, we will disallow the aforementioned five hours.

B. Market Rate Standard

We next consider whether the claimed hourly rates are comparable to the market rates paid to advocates with similar training and experience.

The Karuk Tribe requests an hourly rate of \$200 for attorney Norman for work performed in 2005 and 2006.¹⁰ Norman graduated from law school in 1980, and has practiced civil and criminal law. In D.05-11-031, the Commission determined that it is reasonable to pay an hourly rate in 2005 in the range of \$270-\$490 to intervenor attorneys with 13+ years of experience since completion of law school.¹¹ The hourly rate requested for Norman falls below this range. We conclude that the requested hourly rate is reasonable in light of D.05-11-031. Therefore, we grant the requested rate.

The Karuk Tribe requests an hourly rate of \$50.72 for work performed by Sandi Tripp in 2005. Tripp is the Karuk Tribe's Director of Natural Resources and Environmental Policy. She directed and oversaw the work performed by Barbara Norman, Craig Tucker, and Ramona Driver. Tripp also reported to the Tribal Council on the status of the proceeding. The hourly rate requested for Tripp is less than the rate we typically award for legal interns, paralegals, and support staff.¹² In light of this, we conclude that the requested hourly rate is reasonable, and we grant the requested rate.

The Karuk Tribe requests an hourly rate of \$58.84 for work performed by Craig Tucker in 2005. Tucker is the Tribe's Klamath Campaign Coordinator. The purpose of the Klamath Campaign is to develop and implement strategies for protecting the Klamath River. Tucker coordinated the Karuk Tribe's

¹⁰ Consistent with Commission precedent, the Karuk Tribe requests one-half of Norman's hourly rate for the time spent by Norman preparing the NOI and the request for intervenor compensation.

¹¹ D.05-11-031, *mimeo.*, pp. 16-17.

¹² See, for example, D.05-06-024, which adopted an hourly rate of \$85 for work performed by a paralegal in 2001; and D.06-05-006, which adopted an hourly rate of \$135 for work performed by a paralegal in 2004 and 2005.

activities in this proceeding, participated in conference calls, and prepared status reports for the Tribal Council. Tucker received a Ph.D in biochemistry in 1999. The hourly rate requested for Tucker is less than the rate we typically award for legal interns, paralegals, and support staff.¹³ In light of this, we conclude that the requested hourly rate is reasonable, and we grant the requested rate.

The Karuk Tribe requests an hourly rate of \$36.95 for work performed by Ramona Driver in 2005 and 2006. Driver is the Karuk Tribe's Environmental Administrative Coordinator. Driver provided general support, such as assisting in the preparation of Commission filings and presentations to the Tribal Council. Tucker received a B.S. in geology in 1999. The hourly rate requested for Tucker is less than the rate we typically award for legal interns, paralegals, and support staff.¹⁴ In light of this, we conclude that the requested hourly rate is reasonable, and we grant the requested rate.¹⁵

C. Productivity

D.98-04-059 requires customers to demonstrate productivity by showing that the benefits of their participation exceeded the cost of their participation. The Karuk Tribe states that its participation led to the Commission's adoption of California Commitment C-5, which requires PacifiCorp's shareholders to provide \$450,000 over a three-year period for an independent study of the causes

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Driver's work appears to have included clerical tasks. Clerical work is not compensable if the intervenor's representative in the Commission proceeding receives "professional level-fees." (D.05-12-015, 2005 Cal. PUC LEXIS 534, *7.) That does not appear to be the case here, as the hourly rates requested by the Karuk Tribe for their attorney Norman and others are below the "professional level fees" typically awarded by the Commission.

of toxic algae in the Klamath River. The Tribe believes this Commitment will provide significant public health benefits.

We find that the benefits of the Karuk Tribe's participation are significant but difficult to quantify. The Tribe's participation helped secure \$450,000 of shareholder funding for a study of the causes of toxic algae in the Klamath River. Although the ultimate benefits of the study are uncertain, it is in the public interest to learn more about the harmful algae in order to control or eliminate the algae. In light of the substantial public-interest benefits and relatively modest costs associated with the Karuk Tribe's participation, we find that the Tribe's participation was productive.

D. Direct Expenses

The Karuk Tribe requests \$42.00 for parking associated with attending a settlement conference in San Francisco. We find these costs to be reasonable.

7. Award

We award \$24,698.73 as set forth in the following Table:

<u>Attorney Fees</u>	<u>Year</u>	<u>Hours</u>	<u>Rate</u>	<u>Total</u>
Barbara Lee Norman	2005-6	86.5	\$200	\$17,300.00
Barbara Lee Norman *	2005-6	25.5	\$100	\$2,550.00
Barbara Lee Norman - Travel	2005-6	14.0	\$100	\$1,400.00
<i>Subtotal - Hours & Fees</i>		<u>126</u>		<u>\$21,250.00</u>
<u>Professional Fees</u>	<u>Year</u>	<u>Hours</u>	<u>Rate</u>	<u>Total</u>
Sandi Tripp	2005	12.75	\$50.72	\$ 646.68
Craig Tucker	2005	40.0	\$58.84	\$2,353.60
Ramona Driver	2005-6	11.0	\$36.95	\$ 406.45
<i>Subtotal - Hours & Fees</i>		<u>63.75</u>		<u>\$3,406.73</u>
<u>Expenses</u>				
Parking in San Francisco				42.00
<i>Subtotal Expenses</i>				<u>42</u>
Total		<u>189.75</u>		<u>\$24,698.73</u>

** Time spent preparing the NOI and compensation request.*

PacifiCorp shall pay the award. Consistent with Commission precedent, interest shall be paid on the award (at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release H.15) commencing on July 1, 2006, the 75th day after the Karuk Tribe filed its compensation request on April 17, 2006, and continuing until full payment of the award is made.

We remind the Karuk Tribe, like all intervenors, that Commission staff may audit the Tribe's records related to this award, and that intervenors must make and retain adequate accounting and other documentation to support all claims for intervenor compensation.

8. Waiver of Comment Period

This is an intervenor compensation matter. Therefore, as provided by Rule 77.7(f)(6) of our Rules of Practice and Procedure, we waive the otherwise applicable 30-day comment period for today's Decision.

9. Assignment of Proceeding

John A. Bohn is the Assigned Commissioner and Timothy Kenney is the assigned ALJ in this proceeding.

Findings of Fact

1. The Karuk Tribe has satisfied all the procedural requirements to claim compensation in this proceeding.
2. The Karuk Tribe substantially contributed to D.06-02-033, as set forth in the body of today's decision.
3. The Karuk Tribe's requested hourly rates and related expenses for its attorney and staff are reasonable when compared to the market rates for persons

with similar training and experience, based on the guidelines established in D.05-11-031 and other Commission decisions.

4. Reasonable compensation for the Karuk Tribe is \$24,698.73.
5. The appendix of today's decision shows the components of this amount.

Conclusions of Law

1. The Karuk Tribe has fulfilled the requirements of Pub. Util. Code §§ 1801-1812, which govern awards of intervenor compensation, and are entitled to receive intervenor compensation for the reasonable costs it incurred with respect to its substantial contribution to D.06-02-033.
2. The Karuk Tribe should be awarded \$24,698.73 in compensation for its substantial contributions to D.06-02-033.
3. The comment period for today's decision should be waived pursuant to Rule 77.7(f)(6).
4. The following order should be effective immediately so that the Karuk Tribe may receive the amount awarded therein as soon as possible.

O R D E R

IT IS ORDERED that:

1. The Karuk Tribe is awarded \$24,698.73 for its substantial contributions to Decision 06-02-033. PacifiCorp shall pay the award to the Karuk Tribe within 30 days from the effective date of this Order.
2. PacifiCorp's payment of the award shall include interest at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release H.15, beginning on July 1, 2006, the 75th day after the

Karuk Tribe filed its request for compensation, and continuing until full payment of the award is made.

3. The comment period for today's Decision is waived.
4. Application 05-07-010 is closed.

This order is effective today.

Dated July 20, 2006, at San Francisco, California.

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
DIAN M. GRUENEICH
JOHN A. BOHN
RACHELLE B. CHONG
Commissioners

APPENDIX**Compensation Decision Summary Information**

Compensation Decision:	D0607015	Modifies Decision? No
Contribution Decision(s):	D0602033	
Proceeding(s):	A0507010	
Author:	ALJ Kenney	
Payer(s):	PacifiCorp	

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
Karuk Tribe	4/17/05	\$25,198.73	\$24,698.73		Disallowed hours for time spent by attorney on traveling to meet with client.

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Barbara	Norman	Attorney	Karuk Tribe	\$200	2005-06	\$200
Sandi	Tripp	Support	Karuk Tribe	\$50.72	2005-06	\$50.72
Craig	Tucker	Support	Karuk Tribe	\$40.00	2005-06	\$40.00
Ramona	Driver	Support	Karuk Tribe	\$36.95	2005-06	\$36.95

(END OF APPENDIX)